

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

BRANDON SHANE HARRIS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-22-230-J
)	
FNU KUSHNER, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff, a state prisoner appearing pro se, filed an Amended Complaint under 42 U.S.C. § 1983 alleging constitutional violations occurring at the Lawton Correctional Facility. (Amend. Comp.) [Doc. No. 10]. The matter was referred for initial proceedings to United States Magistrate Judge Shon T. Erwin consistent with 28 U.S.C. § 636(b)(1)(B), (C). Judge Erwin screened the Amended Complaint and issued a Report and Recommendation recommending dismissal without prejudice of (1) all claims against Defendants Henderson, Slonker, Poirot, Borger, Greer, Bowers, Garcia, Funk, Davis, Kenelle, Holberry, Con, Sias, Rhoads, and Honaker, and (2) the First Amendment claim against Defendant Vallejo.¹ [Doc. No. 13]. Plaintiff's Eighth Amendment individual capacity claims against Defendants Kushner, Vallejo, Scholer, Rast, and Windham survived the screening. *See id.*

¹ When asked to identify the parties to the lawsuit, Plaintiff identified Defendants "Rhoads" and "Vallejo." In other filings, Plaintiff has identified the same parties as "Rhodes" or "Roads" and "Vallego" or "Vajilo." The Court has elected to use Plaintiff's spellings as presented in his initial identification of the parties. *See* Amend. Compl. at 5, 10.

Despite asking for and being granted an extension of time [Doc. Nos. 14-15],² Plaintiff did not object and has waived his right to appellate review of the factual and legal issues addressed in the Report and Recommendation. *See Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 13] and DISMISSESS, without prejudice, (1) all claims against Defendants Henderson, Slonker, Poirot, Borger, Greer, Bowers, Garcia, Funk, Davis, Kenelle, Holberry, Con, Sias, Rhoads, and Honaker, and (2) the First Amendment claim against Defendant Vallejo. As Plaintiff's Eighth Amendment claims against Defendants Kushner, Vallejo, Scholer, Rast, and Windham survived the screening, the matter remains REFERRED to Judge Erwin for further proceedings.³

IT IS SO ORDERED this 2nd day of November, 2022.


BERNARD M. JONES
UNITED STATES DISTRICT JUDGE

² The Court extended Plaintiff's objection deadline to October 17, 2022. [Doc. No. 15].

³ In an apparent scrivener's error, the Report and Recommendation states that the document terminated the referral; however, Judge Erwin concluded that Plaintiff's Eighth Amendment claim against Defendants Kushner, Vallejo, Scholer, Rast, and Windham survived the screening. Accordingly, the referral remains in effect.